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Nos. 526, 527, 528

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

THE STATE CORPORATION COMMISSION OF KANSAS, ET AL., *Appellants*,

v.

ARROW TRANSPORTATION COMPANY, ET AL., *Appellees*.

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL., *Appellants*,

v.

ARROW TRANSPORTATION COMPANY, ET AL., *Appellees*.

INTERSTATE COMMERCE COMMISSION, *Appellant*,

v.

ARROW TRANSPORTATION COMPANY, ET AL., *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHWESTERN DIVISION.

ANSWER OF APPELLANTS, THE STATE CORPORATION COMMISSION OF KANSAS, THE BOARD OF TRADE OF KANSAS CITY, MISSOURI, THE KANSAS-MISSOURI RIVER MILLS, THE INDIANAPOLIS BOARD OF TRADE, INC., TO MOTION TO AFFIRM.

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Due: January 5, 1960.

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Statement.

Various appellees have filed motion to affirm the decision of the District Court based upon the contention that three previous decisions of this Court, *viz: Dixie Carriers*

v. United States, 351 U.S. 56; *Interstate Commerce Commission v. Mechling*, 330 U.S. 567, and *James McWilliams Blue Line v. United States*, 100 F. Supp. 66 (S.D. N. Y.) affirmed, 342 U.S. 951, involved issues similar to the issue here involved and are decisive of this appeal. The issues involved in the three cases above cited, are wholly different from the issue in this appeal, and those decisions are not controlling of the issue presented in this appeal.

Argument.

There is a fundamental difference between the facts of this appeal and the facts of the three cases relied on by appellees in their Motion to Affirm. A very brief analysis of the cases will demonstrate this.

The basis of the present appeal is the requirement of the District Court that the Interstate Commerce Commission issue subpoena directed to the railroad defendants requiring them to produce their division sheets and that the divisions shown thereon be treated as establishing *prima facie* a reasonable level of rates to be assessed on ex-barge traffic moving by rail beyond Tennessee River barge terminals. There are no present through barge-rail rates, the complaint did not seek establishment of through routes and joint rates, no finding that such routes and rates are "necessary in the public interest" was sought or made.

In the *Mechling case* there were existing through routes and rates; proportional rail rates existed beyond the barge ports and the rail lines sought to increase these proportionals. There was, therefore, no question of creating

new through routes and joint rates without evidence or finding that same are "necessary in the public interest", which is the standard of both Section 15(3) and Section 907(d) of the Interstate Commerce Act. The question of divisions did not arise.

In the Dixie Carrier case the barge line specifically sought establishment of through barge-rail routes and rates. No question of divisions was raised. The case was purely and simply one under Sections 15(3) and 907(d) to require the establishment of new through routes and joint rates; precisely what the present case is not.

The *Blue Line case* is merely another case based on the doctrine of *The Atchison, Topeka and Santa Fe Ry. Co. v. United States*, 279 U.S. 768 (1929). There the Santa Fe undertook to vary the inbound rate on grain to Kansas City, depending upon what carrier thereafter moved the traffic outbound from Kansas City to the Gulf. This arrangement was held to be unlawful. In the *Blue Line case*, the inbound rail line attempted to do the same thing; the inbound rate was varied depending upon the type of carrier handling the outbound movement.

The present case is in no particular similar to any of the above cases. Rail divisions in their very nature contemplate through routes and joint rates. The Interstate Commerce Act recognizes this fact, and provides the circumstances under which the Commission may require the establishment of through routes and joint rates, and in these same statutes makes provision for the prescription of divisions if the carriers fail to agree on them. For example, Section 15(3) specifically provides that in es-

tablishing through routes and joint rates the Commission shall have the power to prescribe the divisions of such rates.

The moving appellees assert at page 7 of their motion that appellants are in error as to the relief sought; and indicate that here not only proportional rates are sought, but "such other rates as the Commission may consider proper in the premises". Whatever catch-all may have been placed in the prayer of the complaint, the action was tried on the theory that rail rates beyond the ports applying on ex-barge traffic was sought; this and this only. The effort was, and is, to procure local rail rates beyond the barge terminals to apply on ex-barge traffic measured by the level of the rail proportionals or by rail divisions or by rail transit balances, whichever happens to be lower. That was the issue before the Commission; that was the only issue determined by the Commission. The Commission held, improperly we think, that the rates should be measured by the level of proportional rates out of other ports. There are no proportional rates out of the Tennessee River ports. The Commission declined to consider rail divisions or rail transit balances as a measure of reasonable rail rates out of these ports. The District Court has ordered the Commission to receive in evidence rail divisions and to treat them as establishing, *prima facie*, what will be maximum reasonable rates out of the river ports into the South. As there are no through routes, and no request was made therefor and no findings requested or made on that subject, this can mean but one thing: the Commission is required to treat rail-divisions

as establishing, *prima facie*, what will be maximum reasonable local rates out of these ports.

This principle, if accepted, will have a revolutionary effect upon the administration of the Interstate Commerce Act. This is the first time this court ever has had before it the claim that rail divisions are relevant to the inquiry as to what will be reasonable rail rates. This is an issue of the first magnitude. If the law is established that rail divisions are relevant to the inquiry as to what are reasonable rail rates, the entire course of rail rate investigations by the Commission will be changed. It can hardly be contended, for example, that rail divisions furnish a maximum reasonable level of rates from Chattanooga to Atlanta on grain reaching Chattanooga by barge, but that traffic reaching Chattanooga by truck, or wagon, or even by another railroad is not entitled to the same consideration.

The confusion comes about by the mistaken concept that *rail divisions* are a measure of the transportation service rendered. *Rail rates* are, or should be at least, a rough measure of the transportation service rendered. *Rail divisions* are simply the manner in which the rail lines divide the available revenues—whether the rate which provides the revenue be more or less than reasonable. If this Court is now to hold that the manner in which railroads choose to divide their joint revenues is to be not only relevant on the issue as to what will be a reasonable rate, but *prima facie* evidence of reasonableness, it should do so only after being fully informed on the subject; certainly it should not fasten so drastic a change upon the

rail lines and their patrons on the basis of cases which did not include any such question. This Court readily can see that if a joint rate happens to be unreasonably high, but can be measured for reasonableness by the portions into which the connecting carriers divide it among themselves, rail shippers paying such joint rate will be in a very difficult position in trying to establish that the joint rate is unreasonable. On the other hand, if the rate is unreasonably low, as is sometimes the case, rail carriers would be thwarted in attempting to correct the rate by the fact that the manner in which they divided it established its reasonableness.

Conclusion.

The issue involved in this appeal is important to the administration of the Interstate Commerce Act; it has never before come before this Court; the Motion to Affirm should be denied.

Respectfully Submitted,

BYRON M. GRAY,
530 New England Building,
Topeka, Kansas,
Attorney for Appellants.

PROOF OF SERVICE.

I have this day served the above and foregoing document upon all counsel of record by mailing to each such counsel, by air mail, properly addressed, a copy thereof.

December 31, 1959.

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Byron M. Gray